



September 8, 2003

The Honorable Vera Katz
Mayor of the City of Portland
1221 SW Fourth Ave., Suite 340
Portland, OR 97204-1995

The Honorable Dan Saltzman
Commissioner of the City of Portland
1221 SW 4th Avenue, Room 230
Portland, OR 97204-1995

Mr. Bill Wyatt
Executive Director of the Port of Portland
P.O. Box 3529
Portland, OR 97208

Re: Tribal Concerns Regarding the Portland Harbor RI/FS Process

Dear Mayor, Commissioner Saltzman and Mr. Wyatt:

This letter is submitted on behalf of the six tribes involved in the Portland Harbor Site -- the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Nez Perce Tribe, and the Yakama Nation (the Tribes). The City, the Port and several private potentially responsible parties (PRPs) signed an Administrative Order on Consent (AOC) to perform a remedial investigation and feasibility study (RI/FS) for Portland Harbor. After signing the AOC, private parties, the City and the Port formed a joint defense group known as the Lower Willamette Group (LWG). The Port is a co-chair of the LWG. The LWG is conducting the RI/FS on behalf of members of the LWG. This letter outlines the Tribes' concerns regarding the LWG's approach to the RI/FS.

The Tribes are fully supportive of an RI/FS that achieves protection of public health and the environment cost-effectively and on an expedited basis. However, the Tribes have serious concerns about the LWG's progress on the Portland Harbor RI/FS. Thus far, the LWG's approach is inconsistent with both the requirements of the AOC and the City's and Port's missions of protecting public health and the environment. The Tribes are concerned that the LWG's approach has derailed an expedited RI/FS and will lead to much higher transaction costs for members of the LWG (and their insurers) and the governments. With the current LWG approach, it will not be possible to achieve a Record of Decision (ROD) for cleanup of the Portland Harbor site by 2006. For these reasons, changes to the LWG approach are recommended.



Tribal roles, interests and concerns at Portland Harbor

The Tribes play dual roles under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) at Portland Harbor. The Tribes consult with EPA on response actions; they are also natural resource trustees. Moreover, the Tribes have important interests that are at stake. For generations Tribal people have eaten fish from the area and have used the area for cultural activities. Natural resources of cultural and spiritual significance to the Tribes – clams, lamprey, sturgeon, and salmonids listed as threatened and endangered under the Endangered Species Act – are found in the Lower Willamette River (LWR).

The Tribes have serious public health concerns about the contamination in Portland Harbor sediments and flowing from upland sources. Portland Harbor sediments are contaminated by a broad range of chemicals (including PAHs, mercury and other metals, dioxin, PCBs, DDT and other pesticides), primarily as a result of commercial activities on land and direct discharges from industrial and municipal outfalls. Many of the contaminants in sediments are persistent bioaccumulative toxins (PBTs). They are found in high concentrations in fish taken from the Willamette River. Oregon has issued a fish advisory for *all* resident fish taken from the Willamette River as a result of contamination from mercury, PCBs, dioxins and organochlorine pesticides. Tribal members consume fish taken from the Portland Harbor, and tribal consumption rates are much higher than those of the average American. When conducting an RI/FS, great care must be taken to carefully characterize the nature and extent of contamination at the site and such data must be used in a human health risk assessment that is technically sound and properly estimates risk to people, including those who consume more fish than the average American.

Tribes are also concerned about the effect that the mix of contamination has on natural resources of tribal significance. The ecological risk assessment for Portland Harbor must appropriately consider the risk to natural resources such as fish. This means the risk assessment must take into account that salmonids, lamprey and sturgeon use the LWR for more than just a “pass-through.”

Evidence is compelling that upland sources in the Portland Harbor area are the single most important source of contamination for sediments at the National Priority List (NPL) site. The Oregon Department of Environmental Quality (DEQ) has been designated the lead for source control actions. However, the parties to the RI/FS should work hard to ensure that upland sources of contamination are controlled earlier in the RI/FS process, rather than later. Early source control is more protective of tribal health and also of natural resources of tribal interest. Early source control also truncates injury to natural resources sooner, and thus reduces the total cost of restoration.

As described below, the LWG has not followed these fundamentals and, instead, is proposing an approach that will not provide adequate protection of public health and the environment. The LWG approach will increase transaction costs for the parties involved in the RI/FS – PRPs and the governments – and result in costs borne by the public in the form of unacceptable risks to health and injuries to the environment.

The LWG approach does not protect public health and the environment, is counterproductive to an expedited, efficient process, and will not result in a ROD by 2006.

Two years have passed since the AOC, including its Scope of Work (SOW), was signed. The LWG has

produced two unacceptable drafts of an RI/FS workplan. The LWG's second draft RI/FS workplan follows more than a year of meetings requested by the LWG with EPA, the Tribes, trustees and DEQ. These meetings focused on key technical issues under the RI/FS. In these meetings, the LWG was given an opportunity to share ideas. The governments provided direction to the LWG to ensure that the LWG understood the approaches that the governments believed were appropriate to an expedited process and protective of public health and environment. The LWG ignored the governments' directions and failed to make required changes to the first draft RI/FS workplan.

After production of the second draft RI/FS, which is unacceptable to the federal and tribal governments, the LWG has taken the position that the LWG is not required to perform sufficient sampling to create a clear picture of where the contamination currently is, what it is, and how bad it is. The LWG also has taken the position that it is not required to assess risks from the site before development of remedial action approaches. These positions are at odds with sound science and are not protective of public health and the environment. They also are contrary to the requirements of the AOC/SOW and long-standing and recent EPA guidances, including ones specifically written for contaminated sediment sites.

To provide a context for the LWG's proposed site characterization approach it is helpful to compare the LWG approach to site characterization at other sites nationally. At Portland Harbor, in a six mile stretch of river, only 58 sediment chemistry samples were collected in Round 1. The LWG has proposed to collect an additional 85 samples in Round 2 sampling. At comparable sites nationally, thousands of samples would have been taken to understand the nature, severity, and the location of contamination in a six mile stretch. The Tribes support use of historical data of appropriate quality and currency. However, sufficient historical data does not exist to fill these gaping holes in our understanding of the nature and extent of contamination at Portland Harbor. Substantial additional sampling must be conducted to allow an adequate base for human health and ecological risk assessments.

Other serious flaws in the LWG process to date include:

- ☐ Key deliverables, submitted for review by the LWG, are not responsive to the requirements of the AOC/SOW and sound science. Frequently the LWG has failed to correct deficiencies in documents identified by the governments. The result is that the LWG has failed to create key building blocks required for an expedited RI/FS and by the AOC/SOW.
- ☐ The LWG has not produced a thorough analysis of existing data regarding sources of and pathways of contamination flowing from the land as required by the SOW. Nor has the LWG produced a conceptual site model regarding such sources and pathways, as required by the SOW. A conceptual model is a key building block to an expedited assessment process. Instead, notwithstanding clear requirements in the SOW, the LWG has claimed that such analysis is not the LWG's responsibility.
- ☐ Deliverables required by the AOC/SOW, which build upon one another, have been produced by the LWG out of sequence, making government oversight and review impossible and compromising an expedited process. For example, it is important to analyze the results of Round 1 sampling before planning and undertaking Round 2 sampling. The LWG has proposed a Round 2 field sampling plan despite the fact that the LWG has not produced a report analyzing the results of Round 1 samples that were collected a year ago.

- ☐ For the human health risk assessment and the development of cleanup objectives, the LWG has insisted on using a fish consumption rate that is not protective of tribal members and those in minority populations who consume far more fish on a daily basis than the national average. The LWG has proposed a fish consumption rate of 17 grams/day, whereas, studies support a consumption rate of 389 grams/day or more. The LWG has refused to change its fish consumption rate despite clear direction from EPA, its sister agencies and the Tribes to do so.
- ☐ The LWG often has not presented data and information in helpful formats and has not explained the technical basis and support for summaries and conclusions reached, despite requests by the government to do so. As a result, government review of the LWG deliverables is more expensive and difficult than it should be with quality products, and government review necessarily is incomplete. For example, contamination data is often displayed alphabetically, which is the near equivalent of a random presentation of data.

In sum, a serious impasse has arisen in the RI/FS process as a result of the differences between the parties over technical issues key to the protection of human health and the environment. Moreover, the process as it currently stands will not achieve an expedited ROD in 2006.

Finally, Tribes are concerned about the Port's position, expressed in meetings with DEQ, that upland source control should wait until after completion of the baseline risk assessment. This position is inconsistent with the Port's environmental mission statements and the early elimination of ongoing sources of contamination to the in-water site from upland sources. Such sources create continuing risks to health and injuries to natural resources of significance to the Tribes. The Tribes also request that the Port and City coordinate more closely with the Tribes and DEQ on upland source control when such matters are being discussed.

The Path Forward

The Tribes request that the Port and the City seek significant improvements in the RI/FS process to ensure that the protection of public health and environment are primary goals in the RI/FS process. The Tribes also request that the Port and the City seek changes to improve relations with EPA, the Tribes, and trustee agencies and the quality of deliverables submitted by the LWG to EPA. The Tribes are open to considering alternatives to the current RI/FS approach identified by you or your staff.

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The Tribes are fully committed to making the process work and look forward to discussing these matters with you and your staff. To further aid discussion, a more detailed analysis of the foregoing issues and suggestions for improvements will be forwarded.

Sincerely,

The Confederated Tribes of the Grand Ronde Community of Oregon
The Confederated Tribes of Siletz Indians of Oregon
The Confederated Tribes of the Umatilla Indian Reservation
The Confederated Tribes of the Warm Springs Reservation of Oregon
The Nez Perce Tribe
The Yakama Nation

(Individual signature pages for each tribe follow.)

cc:

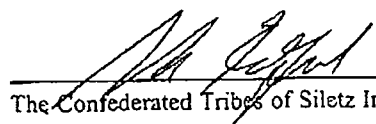
John Iani, Regional Administrator, EPA Region 10
Dan Opalski, EPA Region 10
Chip Humphrey, EPA Region 10
Dean Marriot and Rick Applegate, City of Portland
Cheryl Koshuta, Port of Portland

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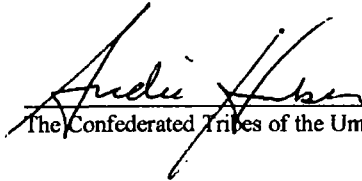
The Confederated Tribes of the Grand Ronde Community of Oregon

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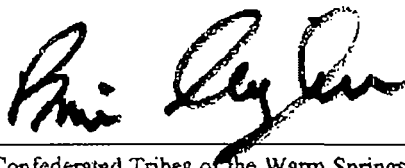


The Confederated Tribes of Siletz Indians of Oregon

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The Confederated Tribes of the Umatilla Indian Reservation

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A handwritten signature in black ink, appearing to read "Phil Ogden". The signature is written in a cursive, flowing style. The first name "Phil" is on the left, and "Ogden" is on the right, with a long horizontal stroke extending from the end of "Ogden".

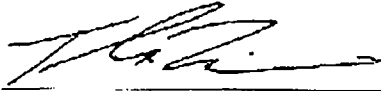
The Confederated Tribes of the Warm Springs Reservation of Oregon

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A handwritten signature in black ink, appearing to be 'NAKS', written over a horizontal line.

The Nez Perce Tribe

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The Yakama Nation